



Montana Shooting Sports Association

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Asserting the Rights of Gun Owners in Montana

March 22, 2007

Senator Joe Balyeat
Capitol Station
Helena, Montana 59620

Re: HB 450

Dear Senator Balyeat,

The Montana Shooting Sports Association (MSSA) takes no position for or against HB 450, but there is some information about HB 450 which MSSA would like to bring to your attention.

This information has to do with a lawsuit MSSA has filed against the State of Montana asserting that the requirement for a person to divulge a Social Security Number (SSN) to obtain a license to hunt or fish violates the right to privacy the people have reserved to themselves in the Montana Constitution. It is worth reiterating the right to privacy here from Article II of the Montana Constitution:

Section 10. Right of privacy. The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.

HB 405 does not cure any constitutional problems. The current right to privacy came from the 1972 Constitutional Convention, where delegate/sponsor Bob Campbell explained the proposed right as being to prevent snooping into the private lives of private people. In our lawsuit, MSSA argues that the exact purpose of use of an SSN is to **facilitate** snooping into the private lives of private people. Exactly the same is true of the last four digit SSN use proposed by HB 450. The four-digit scheme has exactly the same constitutional failing, MSSA says in its lawsuit.

The purpose of the four-digit scheme is to moot MSSA's lawsuit. In arguing a motion on February 26, 2007, to stay lawsuit proceedings while the State implements its four-digit scheme, attorney John Lynch, representing the State of Montana, told the Court, "Now, what we're saying, in this request for a stay, is that the -- the -- if Montana is granted an exemption, like South Dakota has been, that the lawsuit is essentially moot,

because it is -- will likely be dispositive of the issues in the lawsuit, if the exemption is granted."

Receipt of money is not considered sufficient grounds to invade a constitutional right. The courts have held that receipt of money does not rise to the level of need necessary to overcome the "compelling state interest" required to trump a fundamental constitutional right, as privacy is in Montana. If receipt of money were sufficient grounds to allow usurpation of a constitutional right, then all constitutional and fundamental rights would be for sale to the highest bidder, MSSA has argued in its lawsuit.

Allow me to offer an analogy that I have heard made. Suppose the Governor announced that he wished to observe and take pictures of you in the shower. You would respond, of course, that this would violate your right to privacy. Suppose the Governor assured you that the pictures taken would be held in the strictest confidence. It would still violate your right to privacy. Suppose the Governor said that the state could get a lot of money, to be used for good purposes, if you would just allow the pictures to be taken. It would still violate your right to privacy. Suppose the Governor said that he would only take pictures of you from the waist down (analogous to the four-digit scheme), it would STILL violate your right to privacy.

So, MSSA has been very firm in its lawsuit that collection of either nine or four digits of a person's SSN to hunt and fish violates peoples' privacy. This lawsuit will probably be decided after this session of the Legislature adjourns, but before summer ends. Our lawsuit is probably the only and best vehicle to give Montanans relief from the privacy invasion of the SSN requirement to hunt and fish. As the State has argued, the purpose of the four-digit scheme is to moot (derail) this lawsuit.

I hope this information is helpful.

Sincerely yours,

Gary Marbut
President, MSSA